Filed 5/11/10 Flores v. Baldor Electric Co. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

DOROTEO FLORES,

Plaintiff and Appellant,

v.

BALDOR ELECTRIC COMPANY et al.,

Defendants and Respondents.

F055799

(Super. Ct. No. 05C0260)

OPINION

APPEAL from a judgment of the Superior Court of Kings County. Peter M. Schultz, Judge.

Magill Law Offices and Timothy V. Magill for Plaintiff and Appellant.

McCormick, Barstow, Sheppard, Wayte & Carruth and Todd W. Baxter for Defendants and Respondents.

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Plaintiff appeals from the judgment entered in favor of defendants, Baldor Electric Company and Reliance Electric Company, after their motions for summary judgment were granted. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a complaint against Dalena Farms, Frank Dalena, Joe Dalena, and Doe defendants alleging that, while he was using a conveyor belt system manufactured by defendants, he injured his right hand and forearm. The complaint contained various causes of action sounding in negligence, breach of warranty, and strict products liability. Plaintiff subsequently filed Doe amendments, identifying the parties sued as Does 6 and 8, respectively, as Baldor Electric Company (Baldor) and Reliance Electric Company (Reliance).[1] Baldor and Reliance each filed a motion for summary judgment, contending plaintiff could not establish that any product manufactured by it was defective or caused or contributed to plaintiff's injury. Their motions relied in part on the summary judgment granted to codefendant, Kaman Industrial Technologies Corporation (Kaman), which distributed the parts manufactured by Baldor and Reliance. Plaintiff opposed the motions, contending Baldor and Reliance failed to warn of dangers posed by the conveyor belt system. Plaintiff also requested a continuance of the hearing of the motions in order to permit him to conduct further discovery to find evidence with which to oppose the motions. The parties waived oral argument and the court issued its ruling denying plaintiff's request for a continuance and granting both motions for summary judgment.

Facts presented in support of and opposition to the motion for summary judgment indicate plaintiff was working on a conveyor belt system called the super sack machine on the premises of Dalena Farms, when he put his right hand down and it got caught at the end of the conveyor belt. Defendants presented facts indicating Dalena Farms constructed the super sack conveyor belt system, and Joe Dalena and Frank Dalena alone

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[1] Plaintiff also filed amendments identifying other Doe defendants, including Kaman Industrial Technologies Corporation, whose appeal is being litigated contemporaneously with this appeal.

designed it; at the time of the incident, a Baldor motor and a Reliance gearbox, which had been purchased from Kaman, were attached to the super sack conveyor belt system; and there was no evidence the Baldor motor or Reliance gearbox caused plaintiff's injuries. Plaintiff's separate statement of facts did not correspond to defendant's statements of facts, and therefore did not dispute them or present evidence supporting the existence of any dispute.

DISCUSSION

I. Summary Judgment

Summary judgment is granted when no triable issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).)[2] In moving for summary judgment, a "defendant … has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action … cannot be established, or that there is a complete defense to that cause of action." (§ 437c, subd. (p)(2).) Once the moving defendant has met his initial burden, "the burden shifts to the plaintiff … to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (§ 437c, subd. (p)(2).)

"As a summary judgment motion raises only questions of law regarding the construction and effect of supporting and opposing papers, this court independently applies the same three-step analysis required of the trial court. We identify issues framed by the pleadings; determine whether the moving party's showing established facts that negate the opponent's claim and justify a judgment in the moving party's favor; and if it does, we finally determine whether the opposition demonstrates the existence of a triable,

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[2] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

material factual issue. [Citations.]" (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.)

II. Design Defect and Failure to Warn

All of plaintiff's causes of action are premised on the existence of a defect in or a foreseeable risk of harm posed by the super sack conveyor belt system or its component parts. "One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect." (Rest.3d Torts, Products Liability, § 1.) Liability may be premised on theories of strict liability, negligence, or breach of warranty. (See Rest.3d Torts, Products Liability, § 1, com. a, pp. 5-8.) Three types of product defects have been identified:

> "A product is defective when, at the time of sale or distribution, it contains a manufacturing defect**,** is defective in design, or is defective because of inadequate instructions or warnings. A product: [¶] (a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product; [¶] (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe; [¶] (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe." (Rest.3d Torts, Products Liability, § 2; see also *Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 577 (*Taylor*).)

"[T]he manufacturer of a product component is not liable for injuries caused by the finished product into which the component is incorporated unless the component itself was defective at the time it left the manufacturer. [Citations.]" (*Taylor, supra,* 171 Cal.App.4th at p. 584.) The component manufacturer may also be liable if (1) the

manufacturer "substantially participates in the integration of the component into the design of the product; and (2) the integration of the component causes the product to be defective …; and (3) the defect in the product causes the harm." (Rest.3d Torts, Products Liability, § 5.)

A. Separate statements

Baldor and Reliance each filed a separate statement of undisputed material facts that contained 13 facts. Facts one through six and 13 were identical in both motions, and demonstrated that Dalena Farms and its principals and employees designed and constructed the super sack conveyor belt system by which plaintiff was allegedly injured. The remaining facts were similar in both motions, but pertained specifically to either Baldor and its motor or Reliance and its gearbox. They asserted that Baldor and Reliance did not design the super sack conveyor belt system; the Baldor motor and the Reliance gearbox were attached to the conveyor belt system at the time of plaintiff's injury; there was no evidence the motor or the gearbox was defective, and there was no evidence the motor or the gearbox caused plaintiff's injury.

The papers opposing a motion for summary judgment "shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion." (§ 437c, subd. (b)(3).) The Rules of Court prescribe the format of the opposing party's separate statement:

> "Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page …. On the right side of the

> page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is 'disputed' or 'undisputed.' An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. That evidence must be supported by citation to exhibit, title, page, and line numbers in the evidence submitted." (Cal. Rules of Court, rule 3.1350(f).)

In opposition, plaintiff filed an "amended" separate statement of undisputed facts, containing facts numbered 74 through 87, which did not correspond to the 13 facts presented by defendants. Fact 74 stated that "[n]either Baldor nor Reliance provided any type of safety warning decal, placard, device and/or label to a user or consumer of the Baldor engine and gearing, as to the use of said components when the conveyor would be operating." Facts 75 through 87 related to how plaintiff's injury occurred. Thus, plaintiff did not dispute, through facts or evidence, defendants' statements that Dalena Farms designed and constructed the conveyor belt system, Baldor and Reliance did not, and the motor and gearbox were not defective and did not cause plaintiff's injury.

In addition to filing a nonresponsive separate statement, plaintiff requested judicial notice of the papers he filed in opposition to Kaman's motion for summary judgment, including his memorandum of points and authorities, declarations filed in support, his separate statement of undisputed and disputed material facts, and his further statement of undisputed and disputed facts. In response to objections by Baldor and Reliance, the court denied the request. It stated the documents were not "a substitute for plaintiff's failure to respond to defendants' separate statement" and noted that many of the documents "were the subject of evidentiary objections that were sustained by the court." Plaintiff asserts the trial court incorrectly concluded he failed to respond to Baldor's and Reliance's separate statements. His argument seems to assume that the problem with his separate statement was a failure to include a "reference to supporting evidence," as required by section 437c, subdivision (b)(3). The problem, however, was a failure to respond specifically to any of the facts set out by Baldor and Reliance, by stating whether

the fact was disputed or undisputed and citing supporting evidence for any claimed dispute. The separate statement plaintiff filed in opposition to the Baldor and Reliance motions did not respond to any of the facts they asserted were undisputed. The separate statements plaintiff filed in response to the Kaman motion presented a total of 74 facts, which could not be lined up with the 13 presented by Baldor and Reliance to find a clear response regarding whether or not the 13 facts were disputed. As the trial court aptly put it, "[n]either this court nor defendants can be expected to look over 74 facts in a motion brought by a different defendant to determine if a triable issue of fact exists in this case."

Plaintiff argues that some cases have held the trial court is obligated to consider all the evidence presented by the parties, even if it is not referenced in a separate statement. He cites *San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 310-311 (*San Diego Watercrafts*), which rejected a seemingly absolute rule laid out in *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 that evidence not referenced in the separate statement of undisputed facts does not exist (the Golden Rule of summary judgment). The court in *San Diego Watercrafts* held: "in ruling on a motion for summary judgment, a trial court must consider all the evidence submitted, except the court may ignore evidence not disclosed in moving party's separate statement of undisputed facts." The court "reject[ed] the absolute prohibition against consideration of nonreferenced evidence, which seem[ed] to be the substance of the 'Golden Rule' of *United Community Church*." (*San Diego Watercrafts, supra*, at p. 315.)

Plaintiff's separate statement filed in opposition to the Baldor and Reliance motions cited as supporting evidence only plaintiff's deposition transcript and some discovery responses of Baldor and Reliance, which were included with plaintiff's opposition papers. The separate statement did not refer to any evidence or other information presented in the documents from the Kaman motion that were the subject of plaintiff's request for judicial notice. The court had discretion to disregard any evidence

not referenced in plaintiff's separate statement. It did not abuse its discretion by declining to consider the papers and evidence from the Kaman motion.

As discussed below, however, even if we were to consider all the facts and evidence contained in the papers of which plaintiff requested judicial notice, the outcome would not change.

B. Defect in motor or gearbox

In his opposition to the Kaman motion, plaintiff did not present any facts or evidence raising a triable issue of fact regarding whether the Baldor motor or the Reliance gearbox contained a manufacturing defect or a design defect. He also failed to present any facts or evidence raising a triable issue of fact regarding whether any defect in the motor or gearbox was a substantial factor in causing plaintiff's injury.

Plaintiff also failed to raise a triable issue of material fact regarding whether Baldor's motor or Reliance's gearbox was defective due to a failure to warn. "[A] product, though faultlessly made, may nevertheless be deemed defective … if it is unreasonably dangerous to place the product in the hands of the user without adequate warnings." (*Groll v. Shell Oil Co.* (1983) 148 Cal.App.3d 444, 448.) The duty to warn arises when the product poses a particular risk of harm of which the manufacturer or supplier knows or reasonably should know. (*Anderson v. Owens-Corning Fiberglas Corp*. (1991) 53 Cal.3d 987, 1002.)

Plaintiff did not, in any of the papers filed in opposition to the Baldor and Reliance motions or in any of the papers of which judicial notice was requested, identify a particular risk or danger posed by the motor or gearbox that required a warning in order to make the motor or gearbox reasonably safe to use for its intended purpose. Plaintiff presented no facts or evidence, in any of his separate statements, showing such a risk existed. He presented no facts or evidence suggesting a lack of warning of a risk posed by the motor or gearbox caused or contributed to his injury in any way. Consequently, plaintiff did not raise a triable issue of material fact regarding whether the Baldor motor

or the Reliance gearbox was defective because of a failure to warn of a particular risk or dangerous condition of the motor or gearbox supplied to Dalena Farms, that caused the motor or gearbox to be unreasonably dangerous to use without adequate warnings.

C. Defect in conveyor belt system

Plaintiff asserts in his opening brief that there was no guard on the conveyor belt and there were no warning signs "about working on the conveyor belt." He appears to contend Baldor and Reliance may be held liable for a defect in the finished conveyor belt, into which the motor and gearbox were incorporated, or for a failure to warn of a danger posed by the conveyor belt system. The defect or dangerous condition of the conveyor belt plaintiff identified in his argument was an unguarded "pinch point" at the end of the conveyor belt, where his hand got caught.

The manufacturer or seller of a component that is used by another in a finished product is not liable for injury caused by the finished product unless the component it supplied was defective and the defect caused the injury, or the seller substantially participated in the integration of the component into the finished product, that integration rendered the finished product defective, and that defect caused the injury. (Rest.3d Torts, Products Liability, § 5; *Lee v. Electric Motor Division* (1985) 169 Cal.App.3d 375, 385 (*Lee*).) "Component sellers who do not participate in the integration of the component into the design of the product should not be liable merely because the integration of the component causes the product to become dangerously defective." (Rest.3d Torts, Products Liability, § 5, com. a, pp. 130-131.) Further, even if the component seller substantially participates in the integration of the component into the design of a product, the component seller is not liable for harm caused by defects in the integrated product that are unrelated to the component. (Rest.3d Torts, Products Liability, § 5, com. f, pp. 135-136.)

Regarding a component supplier's duty to warn of dangers of the finished product, the Restatement Third of Torts explains:

> "The component seller is required to provide instructions and warnings regarding risks associated with the use of the component product. [Citation.] However, when a sophisticated buyer integrates a component into another product, the component seller owes no duty to warn either the immediate buyer or ultimate consumers of dangers arising because the component is unsuited for the special purpose to which the buyer puts it. To impose a duty to warn in such a circumstance would require that component sellers monitor the development of products and systems into which their components are to be integrated. [Citation.] Courts have not yet confronted the question of whether, in combination, factors such as the component purchaser's lack of expertise and ignorance of the risks of integrating the component into the purchaser's product, and the component supplier's knowledge of both the relevant risks and the purchaser's ignorance thereof, give rise to a duty on the part of the component supplier to warn of risks attending integration of the component into the purchaser's product." (Rest.3d Torts, Products Liability, § 5, com. b, p. 132.)

The Restatement Third of Torts indicates courts have not yet determined whether "the component purchaser's lack of expertise and ignorance of the risks of integrating the component into the purchaser's product," combined with other factors, would "give rise to a duty on the part of the component supplier to warn of risks attending integration of the component into the purchaser's product." (Rest.3d Torts, Products Liability, § 5, com. b, p. 132.) In this case, it is immaterial whether a component supplier owes a duty to an unsophisticated buyer to warn of risks involved in integrating the component into the buyer's finished product, or whether Dalena Farms was, in fact, an unsophisticated buyer. Even if a legal rule imposing such a duty to warn existed, plaintiff presented no evidence that there was any risk that resulted from integrating the motor or gearbox into the conveyor belt system that would have given rise to such a duty; he also presented no evidence that any failure to warn of any such risk was a legal cause of plaintiff's injury. Plaintiff's brief mentions the speed of the conveyor belt, and suggests Baldor and Reliance should have controlled the speed of the conveyor belt. None of his separate statements, however, presented any facts or identified any evidence relating to the speed of the conveyor belt. Consequently, even if Dalena Farms was an unsophisticated buyer and the unsophisticated buyer rule applied, plaintiff failed to raise a triable issue of

material fact to counter Baldor's and Reliance's showing that plaintiff cannot establish essential elements of his causes of action.

III. Plaintiff's Request for a Continuance

"If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due." (§ 437c, subd. (h).) This provision was enacted to mitigate the harshness of the summary judgment procedure. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 100.) Under this provision, not only are continuances to be liberally granted, they are virtually mandated on "a good faith showing by affidavit that additional time is needed to obtain facts essential to justify opposition to the motion." (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254 (*Cooksey*).)

A continuance is not mandatory, however, when the supporting declarations fail to make the required showing. (*Cooksey, supra*, 123 Cal.App.4th at p. 254.) The declarations must show: "'(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.]" (*Ibid*.) "It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show 'facts essential to justify opposition may exist.'" (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 548.) "We apply an abuse of discretion standard of review to the trial court's decision not to continue a summary judgment motion for the purpose of allowing

further discovery. [Citation.]" (*Combs v. Skyriver Communications, Inc*. (2008) 159 Cal.App.4th 1242, 1270.)

Plaintiff's opposition, including the request for a continuance, was filed on March 20, 2008. Plaintiff acknowledged his opposition was due on March 14, but stated he had obtained an extension of time from defense counsel until March 21. Plaintiff's request for a continuance asserted he needed to take the depositions of representatives of Baldor and Reliance, and those depositions were scheduled for March 19 and 26, 2008; he needed time for his experts to review documents produced and information provided by Baldor and Reliance in response to his discovery requests; and he needed to file a motion to compel Baldor and Reliance to provide further responses to his discovery requests. He asserted the depositions and expert analysis were needed to determine what Baldor and Reliance did to warn persons who installed or used their products about the danger of getting a hand caught in the conveyor belt. He asserted further time was needed because he had tried to schedule the depositions since January 2008, but had not been able to get defense counsel to agree to a date until March 3, 2008; he had not received the written discovery responses until March 4, 2008.

The trial court denied plaintiff's request for a continuance on four grounds. First, the request was not timely because it was not made prior to March 14, the date plaintiff's opposition was due, and the extension plaintiff obtained was not approved by the court. Second, plaintiff's explanation of the need for a continuance was made in his points and authorities, rather than in a declaration, as required by section 437c, subdivision (h). Third, plaintiff failed to explain how the discovery he proposed would assist in raising a triable issue of fact. Fourth, plaintiff was not diligent in conducting discovery and had had ample time to complete it.

Opposition to a motion for summary judgment "shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, *unless the court for good cause orders otherwise*." (§ 437c, subd. (b)(2), italics added). While plaintiff obtained

an agreement of opposing counsel permitting him to file a late opposition, he did not apply to the court for an order granting him an extension of time. Consequently, he did not obtain an extension that permitted him to file his request for a continuance late. The request was not filed timely.

Plaintiff's opposition was accompanied by two declarations. The declaration of plaintiff's counsel, Timothy Magill, merely stated that a true and correct copy of plaintiff's deposition transcript was attached to his separate statement. The declaration of Rebecca James described her experiences trying to arrange for the depositions of representatives of Baldor and Reliance. Contrary to section 437c, subdivision (h), plaintiff's request for a continuance was not accompanied by declarations demonstrating "that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented." (§ 437c, subd. (h).) The declarations submitted by plaintiff contained no information showing that any facts to be obtained from the proposed discovery were essential to opposing the motion or that there was reason to believe such facts might exist. (*Cooksey, supra,* 123 Cal.App.4th at p. 254.) Further, even the argument presented by plaintiff in his memorandum of points and authorities did not identify any facts he anticipated would be obtained from the outstanding discovery that would be essential to his opposition. Plaintiff did not identify any facts or information he hoped to discover by compelling further responses to written discovery requests. He anticipated learning from the depositions what Baldor and Reliance did to warn persons who installed or used their products about the danger of getting a hand caught in the conveyor belt. The motions for summary judgment, however, did not challenge plaintiff's ability to prove breach of a duty to warn; rather, they challenged the elements of defect (the product contained a manufacturing or design defect or was unreasonably dangerous without an adequate warning) and legal cause. The motions for summary judgment also established that neither Baldor nor Reliance designed the conveyor belt system, and therefore they were not liable for any design defects in the conveyor belt system, or any failure to place

guards or warnings on it. Plaintiff did not assert that he anticipated obtaining any information relevant to those issues from the depositions or written discovery.

Accordingly, we conclude the trial court did not abuse its discretion by denying plaintiff's request for a continuance of the hearing of the motions.

IV. Denial of Judicial Notice of Expert Declaration

Plaintiff contends the trial court erred in striking the declaration of its expert, Thomas Ayres. The declaration was among the papers filed in opposition to the Kaman motion for summary judgment, of which plaintiff requested the trial court take judicial notice. Baldor and Reliance objected to the request. Defendants asked that the court deny judicial notice of plaintiff's separate statements because they were not responsive to defendants' separate statements of undisputed facts, many of the facts did not pertain to Baldor or Reliance, and some of the facts were supported by the Ayres declaration, to which the court had sustained objections in its ruling on Kaman's motion.

Judicial notice rulings are reviewed for abuse of discretion. (*In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1271.) "'Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.' [Citation.]" (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 (*Lockley*).) Matter to be judicially noticed must be relevant. (*Mangini v. R. J. Reynolds Tobacco Co*. (1994) 7 Cal.4th 1057, 1063, overruled on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.) The court may take judicial notice of court records. (Evid. Code, § 452, subd. (d).) However, while the court may take judicial notice of the existence of each document in a court file, it may not take judicial notice of allegations in affidavits or declarations in court records because those matters are reasonably subject to dispute and therefore require formal proof. (*Lockley*, *supra*, at p. 882.)

Plaintiff's only apparent reason for requesting judicial notice of the Ayres declaration was to have the court consider the statements made in it in lieu of evidence, to raise a triable issue of fact in response to defendants' separate statements of undisputed facts and supporting evidence. The trial court could not take judicial notice of it for that purpose. It could only have taken judicial notice of the fact the declaration had been filed. It could not take judicial notice of the truth of any facts stated therein. The existence of the declaration in the court file was not relevant to the issues raised in the Baldor and Reliance motions. Consequently, the court did not abuse its discretion by denying plaintiff's request to take judicial notice of Ayres' declaration.

V. Motion to Take Evidence

On February 23, 2010, after the time for filing briefs had passed, plaintiff filed a request for judicial notice and a motion for production of additional evidence, asking this court to take judicial notice of, or accept as additional evidence, two invoices reflecting the purchase of the Baldor motor and the Reliance gearbox by Dalena Farms from Kaman. Plaintiff represents the invoices were inadvertently omitted from the evidence he presented in opposition to the motions for summary judgment.

Plaintiff has not identified any subsection of Evidence Code section 451 or 452 that applies to the invoices that are the subject of the requests. The invoices are not court records or matters not reasonably subject to dispute. (Evid. Code, § 452, subds. (d), (h).)

Section 909 permits the reviewing court, under some circumstances, to "make factual determinations contrary to or in addition to those made by the trial court … based on the evidence adduced before the trial court either with or without the taking of evidence by the reviewing court." Pursuant to this section, plaintiff requests that this court accept the invoices as additional evidence. "'Although appellate courts are authorized to make findings of fact on appeal by Code of Civil Procedure section 909 and rule 23 [now rule 8.252] of the California Rules of Court, the authority should be exercised sparingly. [Citation.] *Absent exceptional circumstances, no such findings*

should be made. [Citation.]' [Citations.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Plaintiff has not pointed out any exceptional circumstances that warrant taking new evidence in this appeal.

Additionally, a motion to introduce new evidence on appeal may be denied when the evidence will not change the result in the case. (*Wight v. Rohlffs* (1937) 9 Cal.2d 620, 623; *Greva v. Rainey* (1935) 2 Cal.2d 338, 350.) The outcome of the case would not be affected by admission of the invoices. The invoices have no bearing on the key issues presented by the motions: whether the motor or gearbox was defective or posed a particular risk of injury to users that required adequate warnings; whether Baldor and Reliance participated in the integration of the motor and gearbox into the design of the conveyor belt; whether integration of the motor or gearbox into the conveyor belt resulted in a defect or a particular risk of harm in the conveyor belt system that required adequate warnings; and whether any defect or failure to warn was a legal cause of plaintiff's injury.

Plaintiff's February 23, 2010, request for judicial notice and motion for production of additional evidence are denied.

VI. Denial of Motion for New Trial

"[A] trial judge is accorded a wide discretion in ruling on a motion for new trial and … the exercise of this discretion is given great deference on appeal." (*Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871-872.) On appeal, we must "review all rulings and proceedings involving the merits or affecting the judgment as substantially affecting the rights of a party [citation], including an order denying a new trial. In our review of such order *denying* a new trial, as distinguished from an order *granting* a new trial, we must fulfill our obligation of reviewing the entire record, including the evidence, so as to make an independent determination as to whether the error was prejudicial. [Citations.]" (*Id.* at p. 872.)

A motion for new trial may be granted on the ground of "[n]ewly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial." (§ 657, subd. (4).) The essential elements the moving party must establish are "(1) that the evidence is newly discovered; (2) that reasonable diligence has been exercised in its discovery and production; and (3) that the evidence is material to the movant's case" in the sense that it is likely to produce a different result. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 137, 138.)

Plaintiff contends his motion for new trial was erroneously denied by the trial court. His motion was based on a contention that the deposition testimony of representatives of Baldor and Reliance, who were produced for deposition as the persons most knowledgeable on specified subjects, constituted newly discovered evidence warranting a new trial. Plaintiff contends the testimony was newly discovered and could not have been produced earlier because the depositions were not taken until after plaintiff's opposition to the Baldor and Reliance motions for summary judgment was due. He asserts he was diligent in obtaining the depositions, because he began trying to arrange them in January 2008, shortly after the summary judgment motions were filed. He contends the depositions are material because they included testimony about what warnings or instructions accompanied the motor and gearbox when they were sold by Baldor and Reliance.

In denying the motion for new trial, the trial court concluded plaintiff unreasonably delayed setting and taking the depositions. "'[O]rdinarily the issue of due diligence in preparation for trial, including the discovery of material evidence, raises factual issues and it is safest to abide by the ruling of the trial court upon the question of due diligence. [Citation.]'" (*Fernandez v. Security-First National Bank* (1962) 206 Cal.App.2d 676, 682.) We defer to the trial court's factual finding, which was supported by substantial evidence.

The trial court also found the evidence offered by plaintiff as newly discovered evidence was not material, and was merely cumulative, and therefore not new. It stated:

> "Plaintiff has failed to raise a triable issue of fact that the motor and gear box manufactured by Defendants Baldor and/or Reliance were defective; that these manufacturers participated in the design or assembly of the conveyor belt system, or that they had a duty to inspect the finished product. Under the circumstances set forth here, the case law holds that the manufacturer of the finished product is in the best position to protect against and warn of the dangers that might arise after the component parts are installed."

We agree plaintiff's newly discovered evidence was not material to the issues raised by the summary judgment motions. Baldor and Reliance challenged plaintiff's ability to prove that the motor and gearbox were defective and that any defect in those products was a legal cause of his injury. They also demonstrated they did not participate in the design of the conveyor belt system and invoked the rule that the manufacturer of a nondefective component part is not liable for a defect in the finished product into which the component is integrated, if the manufacturer was not involved in the design of the finished product. (*Lee, supra*, 169 Cal.App.3d at p. 385; Rest.3d Torts, Products Liability, § 5.) The new evidence offered by plaintiff related to whether warnings or instructions were included with the motor and gearbox when they were sold by Baldor and Reliance. The evidence would not raise a triable issue regarding whether the motor or gearbox was defective or required warnings, or whether they caused the conveyor belt to be defective or require warnings. The evidence would also fail to raise a triable issue of fact to counter defendants' showing that no defect in their products or failure to warn was a legal cause of plaintiff's injury.

The court did not abuse its discretion by denying plaintiff's motion for a new trial.

DISPOSITION

The judgments in favor of Baldor and Reliance are affirmed. Baldor and Reliance are awarded their costs on appeal.

_____
HILL, J.

WE CONCUR:

_____
DAWSON, Acting P.J.

_____
KANE, J.